STATE OF MICHIGAN

COURT OF APPEALS

CHARLES M. SMILLIE, III,

Plaintiff-Appellant,

v

HOWARD B. YOUNG and WEISMAN, TROGAN, YOUNG & SCHLOSS, P.C.,

Defendants-Appellees.

UNPUBLISHED
June 30, 1998

No. 196261
Oakland Circuit Court
LC No. 95-507792 NI

Before: Griffin, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting summary disposition pursuant to MCR 2.116(C)(10), in favor of defendants in this legal malpractice action. We affirm.

This Court reviews a trial court's grant or denial of summary disposition under MCR 2.116(C)(10) de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Summary disposition may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) challenges whether there is factual support for the claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). In deciding this motion, a court must consider all the pleadings, affidavits, admissions, and other documentary evidence available to it. *Id.*; MCR 2.116(G)(5). All reasonable doubts are decided in favor of the nonmoving party. *Id.* However, the court is not permitted to assess credibility or to determine factual issues. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). The party seeking summary disposition must identify the issues for which it claims there is no factual support. *Id*. at 160. The nonmoving party must then respond with affidavits or other evidentiary materials that establish the existence of a factual issue for trial. *Id.* If the opposing party cannot present documentary evidence to establish that a material factual dispute exists, summary disposition is proper. *Id.*

In a legal malpractice action, the plaintiff must prove (1) the existence of an attorney-client relationship, (2) the acts of the attorney that are alleged to have constituted negligence, (3) that the

negligence proximately caused the injury, and (4) the fact and the extent of the injury alleged.

Simko v Blake, 448 Mich 648, 655; 532 NW2d 842 (1995); *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994); *Adell v Sommers Schwartz Silver & Schwartz, PC*, 170 Mich App 196, 204; 428 NW2d 26 (1988). A plaintiff proves negligence by showing that his attorney failed to exercise reasonable skill, care, discretion, and judgment in the conduct and management of his case. *Simko, supra* at 655-656; *Radtke v Miller Canfield Paddock & Stone*, 209 Mich App 606, 612; 532 NW2d 547 (1995), rev'd on other grounds 453 Mich 413 (1996). As in other tort actions, the plaintiff has the burden of proving all the essential elements of the suit in order to prevail. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 586; 513 NW2d 773 (1994).

On appeal, plaintiff raises numerous arguments in support of his position that the trial court erred in granting summary disposition in favor of defendants. First, plaintiff argues that the trial court erred by not realizing that defendants were hired to evaluate two separate offers, not just one. Specifically, plaintiff alleges that defendants billed him for professional services, including meetings and telephone conversations relating to outside investors involved in the refinancing agreement but did not inform him of the offers made by the outside investors or of the negotiations that transpired. Plaintiff argues that defendants' failure to read the relevant documents, and their failure to inform him of the pending offers, was a breach of the standard of care. In addition, plaintiff contends that defendants used undue influence on him to force him to sign the documents in which he consented to the final agreement.

In finding that plaintiff's argument is without merit, we note that the complaint does not allege that defendants were retained to advise plaintiff in connection with competing offers for the sale of his stock. To the contrary, the complaint and response specifically state that defendants were retained to represent plaintiff in the restructuring of his business and to review the redemption agreement. Thus, the issue regarding the validity of competing offers was never raised in the lower court prior to this appeal. Nor was plaintiff's undue influence argument raised below. Accordingly, these matters have not been preserved for appeal. *Brown v Michigan Bell Telephone, Inc*, 225 Mich App 617, 626; 572 NW2d 33 (1997). Furthermore, plaintiff failed to support these assertions with documentary evidence or supplemental facts necessary to successfully assert a claim and overcome a summary disposition motion. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997). Indeed, a party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *Id.*; *Goolsby v Detroit*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984). Therefore, we decline to address the merits of this claim.

Second, plaintiff asserts that the trial court erred by not realizing that defendants' malpractice was a proximate cause of the damages he sustained. Defendants respond that plaintiff was unable to show that he was offered a better proposal than that which was negotiated by them, or that he could have avoided financial difficulties in the absence of the agreement.

Generally, proximate cause in attorney malpractice actions is a factual inquiry for the jury. *Fiser v Ann Arbor*, 417 Mich 461, 474-475; 339 NW2d 413 (1983); *Simko v Blake*, 201 Mich App 191, 193; 506 NW2d 258 (1993), aff'd 448 Mich 648 (1995). In order to prove proximate cause, a plaintiff must establish that the defendant's action was a cause in fact of the claimed injury. *Pontiac School Dist v Miller Canfield Paddock & Stone*, 221 Mich App 602, 613; 563 NW2d 693 (1997) (citing *Charles Reinhart Co, supra* at 585-586). In other words, "[a] plaintiff must adequately

establish cause in fact in order for legal cause or 'proximate cause' to become a relevant issue." *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994).

After reviewing the lower court record, we hold that plaintiff failed to present substantive evidence from which a jury could infer that defendants' alleged legal malpractice was a cause in fact of plaintiff's financial losses. Plaintiff came to defendants in a financially distraught situation, when timing was essential in order to prevent plaintiff and his company from bankruptcy. In addition, the arrangement in which plaintiff was situated after the redemption agreement had taken effect placed him in a substantially greater economic position than before. Plaintiff was relieved of significant debt and afforded an opportunity to continue his livelihood and earn a salary. In light of these facts, we conclude that plaintiff failed to satisfy his burden of presenting evidence that he sustained damages caused in fact by defendants' alleged malpractice.

Third, plaintiff contends that the trial court erred by concluding that there was no real issue of fact because defendants admitted that they did not read all the relevant documents. Defendants responded that they were not retained to represent plaintiff in the actual redemption matter, but only to negotiate the redemption agreement. Because plaintiff has not submitted any documentary evidence to rebut defendants' claim that they were not retained to represent plaintiff in that capacity, but were only responsible for consummating the contract, the issue whether defendants were negligent in connection with the redemption matter is not relevant. Accordingly, plaintiff's claim must fail.

Fourth, plaintiff argues that the trial court erred by denying his request for reconsideration on the basis that he did not retain an expert witness to establish the legal standard of care. At the summary disposition hearing, the trial court instructed plaintiff to obtain an expert witness to testify that defendants breached the requisite standard of care in order to establish his claim. In fact, plaintiff was given a two-week extension in order to comply. Plaintiff failed to do so and the court dismissed the action. The court subsequently denied plaintiff's motion for reconsideration because he presented the same issue on reconsideration that the court had already determined to be meritless.

This Court reviews a trial court's decision to deny a motion for reconsideration for an abuse of discretion. *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). Because plaintiff asserted identical facts and allegations in his motion for reconsideration and did not supplement the record with additional evidence or claims that would affect the disposition of the case, we find that the trial court did not abuse its discretion in denying the motion. Plaintiff did not show that a palpable error occurred or that a different disposition of defendants' motion would result from a rehearing.

Fifth, plaintiff claims that the trial court erred in granting summary disposition to defendants while discovery was still pending. Plaintiff failed to raise this issue or argue this point to the trial court; therefore, the issue has not been preserved for appeal. *Brown, supra* at 626. Moreover, plaintiff's brief on appeal gives only cursory treatment to this issue and omits any reference to supporting proofs on the record or legal authority. Accordingly, we decline to address the issue. *Meagher v Wayne State Univ*, 222 Mich App 700, 719; 565 NW2d 401 (1997).

Sixth, plaintiff argues that the trial court erred in granting summary disposition to defendants before he had an opportunity to retain an expert witness. This argument is without merit because the lower court record indicates that the court explicitly provided plaintiff with a two-week extension in order to secure an expert before it would rule on the motion. Plaintiff did not request additional time and, in fact, represented to the court that he had an expert, but he was not present at that time. Plaintiff failed to comply with the court's instructions, and we find no error in the trial court's decision.

Seventh, plaintiff maintains that the court erred by failing to transmit a scheduling order to him and by advancing the hearing date from the date scheduled on the docket. Again, plaintiff failed to object to the scheduling order at the trial court and did not request a change in the hearing date. Therefore, this issue was waived for purposes of this appeal. *Brown, supra* at 626. In addition, plaintiff failed to argue the merits of this issue in his brief or cite to any legal authority in support of his position. A mere statement of position is insufficient to bring an issue before this Court. *Meagher, supra* at 718. Furthermore, a party may not leave it to this Court to search for authority to sustain or reject the party's position, and we decline to do so here. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997).

The remaining arguments included in plaintiff's brief on appeal were not raised in the trial court and, therefore, were not preserved for appellate review. Accordingly, we decline to address them. *Brown, supra* at 626. The trial court properly granted summary disposition in favor of defendants.

Affirmed.

/s/ Richard Allen Griffin
/s/ Roman S. Gribbs
/s/ Michael J. Talbot